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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/263,805	03/08/1999	YOSHIHIKO HIROTA	49733-016	2255

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WASHINGTON, DC 20005-3096

EXAMINER

WU, JINGGE

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 06/11/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/263,805

Applicant(s)

HIROTA ET AL.

Examiner

Jingge Wu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-44, 52, 53, 56, 58 and 59 is/are pending in the application.
- 4a) Of the above claim(s) 3-14, 16-21, 24-28, 31-34, 36-44, 58 and 59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 2, 15, 20, 22, 23, 29, 52, 53 and 56 is/are rejected.
- 7) ☐ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's election without traverse of species I, filed on Mar 19, 2003, was entered and made of record. Dependent claims 3 and 18 belong to species 2, dependent claims 32-33 belong to species III, and dependent claims 58 belongs to species IV. Therefore, the claims 3, 18, 32-33, and 58 are excluded in species I. Accordingly, Claims 1-2, 15, 22-23, 29-30, 35, 52-53 and 56 are presented to prosecution. Applicant is advised to cancel all claims that are not presented to prosecution in case that the case is in the condition of allowance.
2. Applicants' amendment has required new grounds of rejection. New grounds rejection are therefore presented in the Office Action.
3. Applicant's arguments with respect to claims 1, 52, and 56 have been fully considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-2, 15, 22-23, 29-30, 52-53, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5287204 to Koizumi et al. (a reference of the record) in view of US 5748801 to Goto.

As to claim 1, Koizumi discloses an image processing apparatus including:

A brightness (L^*) data extracting section for extracting brightness data from image information of each pixel (fig. 3 element 16b, note that converting color data to L^* data);

first determining means (fig.6a, elements 434) for determining a color pixel by using a reference value (a threshold)(col. 8 lines 4-48);

means for dividing the image into a predetermined number blocks in an image processing method (Figs. 13c and 13d, col. 11, lines 32-60).

counting means for counting the number of color pixels for each block (fig. 8, element 443); and

second determining means for discriminating an color image based on the counting results by counting means (fig. 8, element 445, col. 8 line 57-col. 10 line 23).

Koizumi uses a predetermined L^* threshold to determine the color pixel but does not explicitly mention the threshold is determined based on the extracted brightness which is well known in the art.

Goto, in an analogous environment, discloses the step of extracting the brightness and setting the threshold of color pixel based on the brightness (fig. 2-4, col. 4 line 15-col. 5 line 54)

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the scheme of Goto in the apparatus of Koizumi in order to accurately and quickly determine the color image or monochromatic image. Doing so would increase the efficiency of the apparatus.

As to claim 56, the claim is a corresponding method claim to claim 1. The discussion is addressed with regard to claim 1.

As to claim 2, Koizumi further discloses third determination means for determining color block (fig. 1, element 4).

As to claim 52, all limitations are discussed with regard to claim 1 except printing means. Koizumi further discloses the printing means for printing color or monochrome output(fig. 2, element 34, col. 4 line 29-col. 5 line 32, col. 10 lines 24-60).

As to claim 15, Koizumi further discloses the block is color block when the number of color pixels exceed a threshold (col. 8 line 57-col. 9 line 46).

As to claims 22 and 23, Koizumi further discloses the determining means for determining an image as color image when number of color blocks exceed a threshold (col. 9 line 47-col. 10 line 23).

As to claim 29, Koizumi further discloses excluding or correcting (not counting) a monochromatic block in certain portion of image from the determination (col. 9, lines 3-26).

As to claim 30, Koizumi further discloses the portion includes peripheral portion of the image (col. 10 lines 7-23).

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As to claim 53, Koizumi further discloses a scanner (fig. 2 element 40, col. 4 lines 50)

Allowable Subject Matter

9. Claims 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Contact information

10. Any inquiry concerning this communication or earlier communications should be directed to Jingge Wu whose telephone number is (703) 308-9588. He can normally be reached Monday through Thursday from 8:00 am to 5:30 pm. The examiner can be also reached on second alternate Fridays.

Any inquiry of a general nature or relating to the status of this application should be directed to TC customer service whose telephone number is (703) 306-0377.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Amelia Au, can be reached at (703) 308-6604.

The Working Group Fax number is (703) 872-9314.

Jingge Wu

Primary Patent Examiner

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